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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re K.G., a Person Coming Under the  
Juvenile Court Law.

H038143  
(Santa Clara County  
Super. Ct. No. JD18779)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

K.G.,

Defendant and Appellant.

K.G., a 16-year-old minor, appeals from an order denying her a hearing on her former Welfare and Institutions Code section 388<sup>1</sup> petition for modification. We find no error and affirm.

**I. Procedural and Factual Background**

In February 2008, the Santa Clara County Department of Family and Children's Services (Department) filed a petition alleging that the minor, who was then 12 years old,

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

came within the provisions of section 300, subdivision (b) [failure to protect]. The petition alleged that the minor's mother and her boyfriend R.P. physically abused the minor's older sister Jenny on three occasions, made the girls sleep in the garage on the floor with only blankets, and frequently used a belt on the minor which left her with bruises.<sup>2</sup> It was also alleged that the minor did not feel safe in the home since her sister had been removed, and the mother and R.P. had become more violent. In March 2008, the juvenile court adjudged the minor a dependent child, returned her to the care of her mother, and ordered that both the minor and her mother receive family maintenance services. These services included individual and family counseling.

In May 2008, the social worker filed an interim review report. The mother stated that the minor was defiant, did not listen to her or R.P., and her behavior was affecting her younger children. Neither the mother nor the minor had begun counseling. The minor was referred to Systems of Care mental health services. The mother reported that she would obtain a therapist through her own insurance.

The six-month review report in September 2008 stated that the minor continued to be defiant. The minor had been in weekly mental health therapy with Eduardo Fonseca since May 2008, and Fonseca had collateral therapy sessions with both the minor and her mother. The minor's school performance was poor and included four F's. Since the mother had been unable to find a therapist, the social worker made a referral for her and recommended that she and R.P. participate in couples therapy. The juvenile court continued family maintenance services for the minor and her mother.

In March 2009, the social worker filed a status review report in which she recommended that the minor's dependency be dismissed and that family maintenance services for Jenny be continued. The family was struggling financially, and the mother

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<sup>2</sup> R.P. has been the only father figure in the minor's life since she was approximately one year old, and thus the minor considered R.P. to be her stepfather. R.P. and the mother married during the course of the dependency proceedings.

was unable to continue counseling services due to complications with her health insurance. The minor received D's and F's at school. Though the school was two blocks from her home, the minor had difficulty getting to school on time. The juvenile court ordered that the minor and her sister be continued as dependent children with family maintenance services.

In September 2009, the social worker requested a continuance because the minor went to a party without permission and became "dangerously intoxicated." The social worker also reported that a referral for wraparound services had been submitted, because the family required a higher level of services.<sup>3</sup> The juvenile court granted the request for a continuance.

In October 2009, the status review report was filed. The social worker recommended that an additional six months of family maintenance services be ordered. The minor had stayed out all night on several occasions, took risks with her safety, made poor decisions, and had difficulty with controlling her anger. There was also ongoing conflict in the home. The facilitators at wraparound services were now working with the family. The juvenile court ordered continued family maintenance services for the mother and both children.

In June 2010, a status review report was filed. The social worker recommended that the minor continue to receive family maintenance services. The family continued to experience financial difficulties. Jenny was pregnant, and there was ongoing conflict between Jenny and the minor. Though the minor had received all D's and F's the previous semester, she was currently receiving three F's and the "other grades [were] in the C range." The minor continued to work with wraparound services staff, and was making progress on her treatment goals. The juvenile court ordered continued family maintenance services, including wraparound services.

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<sup>3</sup> Wraparound services are "intensive home-based family services" arranged by the Department.

In November 2010, a status review report was filed. The social worker recommended that the minor and her mother receive an additional six months of family maintenance services. Jenny had moved out of the house, and the minor had become more aggressive. The minor's school attendance had improved though she continued to have difficulty in getting to her first period class. The minor also stayed out late, but was not returning home under the influence of alcohol. The Department continued to provide wraparound services, and one family specialist worked with the minor. Since the minor refused to participate in therapy, the facilitator at wraparound services and the social worker were considering monetary incentives for her to begin therapy. The parents, however, were opposed to the monetary incentives. The juvenile court continued family maintenance services, including wraparound services.

On January 28, 2011, the Department filed an amended supplemental petition pursuant to section 387. The petition alleged: the minor had been placed in protective custody two days earlier; the minor had been placed in a 29-day respite care at Rebekah's Children's Services on December 20, 2011, because she had been running away from home, abusing marijuana, and missing school; the minor was at significant risk of harm in her mother's custody because she had been diagnosed with major depressive disorder and her mother did not believe that the minor was depressed; and the minor had "stabilized significantly" but the respite period was near the end and the minor needed a higher level of care than placement in the home.

On January 31, 2011, the Department filed a memorandum for the hearing on the section 387 petition. The social worker stated that the minor had been receiving family maintenance services for almost three years. The level of conflict between the minor and her parents had escalated during that period. The minor left home without permission and used marijuana as often as four or five times per week. However, she did not use drugs while in respite care. Though the minor was diagnosed with major depression and prescribed psychotropic medication, her mother did not believe that the minor was

depressed or that she needed medication. Both parents now worked and were unable to ensure that the minor went to school. The minor did not get herself to school before 11:00 a.m. The parents believed that “everything was perfect” with the minor no longer in the home. While the minor was in respite care, she did not display disruptive behaviors and there were conflicts only when her family visited her. According to the social worker, the minor was the “scapegoat in this family.”

The mother was not present for the detention hearing and the juvenile court ordered that the minor be detained.

On February 3, 2011, the juvenile court issued an order granting the Department’s application for psychotropic medication. The minor had significant depression and was willing to try medication for depression and insomnia.

On February 22, 2011, a jurisdiction/disposition report was filed. The social worker recommended that the section 387 petition be found true and the minor removed from her mother’s custody. The minor had been placed in a foster home, but continued to “have issues with impulse control and poor judgment” and to skip classes. The team from wraparound services continued to work with the minor. The minor indicated that she could not talk to one therapist and the social worker referred her to another one. The minor was going to begin taking medication during a school break so that the side effects could be more easily observed. The juvenile court continued the minor as a dependent of the court, and ordered family reunification services, including wraparound services.

In April 2011, an interim review report was filed. The minor was in a foster home, and she continued to have difficulties. She left the foster home without permission, shoplifted, and went to her parents’ home without permission. According to the minor’s therapist, the minor “has a lot of pain which she acts out in the recent behaviors.” The parents did not seem to understand that their need to participate in services was not dependent on the minor’s behavior. The minor was receiving wraparound services and counseling.

In August 2011, the Department filed a status review report in which the social worker recommended that the minor and her mother receive six months of family reunification services. The minor had passed all of her classes and was looking forward to taking occupational classes. The minor was more stable emotionally, engaged with her therapist, and her relationship with her court-appointed special advocate (CASA) was positive. The minor was also doing well with her wraparound services team.

The minor's child advocate filed a report in which she stated that she had engaged in a variety of activities with the minor, and she found that the minor was "delightful." Though the minor indicated that she wanted to return home, the child advocate believed that she should remain in foster care due to the instability of her mother's home.

The mother was not present at the review hearing in August. The juvenile court found that the mother's progress was "minimal," and continued family reunification services.

On August 23, 2011, the juvenile court issued an order granting another application for psychotropic medication. The minor had responded well to the medication and she agreed to continue taking it. However, the minor told her counsel that she wanted to speak to her physician about the possibility of tapering off the medication.

On September 2, 2011, the minor's placement was changed to the Open Arms Level 10 group home because the foster home was no longer able to meet her mental and emotional needs.

On November 7, 2011, an interim review report was filed. The minor was now living in a foster home and participating in wraparound services. The minor did not want to continue therapy and she stopped taking her psychotropic medication. The minor stated that the medication made her feel dizzy and gain weight. Though the minor had "tried hard to improve her behavior," she did not always comply with rules. The minor had transferred to another high school, and she received F's in three of her classes. The

social worker did not believe the minor was ready to return home and recommended that family reunification services be continued for three months. Following a hearing, the juvenile court ordered that all previous orders were to remain in effect.

On November 23, 2011, the Department filed an ex parte application for an order returning the minor to her mother's home with family maintenance services. The mother was prepared to have the minor home under a behavior contract, and the minor wanted to return home and appeared committed to the contract. They would receive family maintenance services including mental health support from Systems of Care and respite care from the child advocate and a family friend. The juvenile court issued the order.

On January 30, 2012, a status review report was filed. The social worker recommended that the minor and her mother receive six months of family maintenance services. The minor did not pass any of her classes during the last quarter and she dropped her occupational classes. The minor sometimes did not want to get out of bed and she missed school. The wraparound services team had discharged the minor on November 7, 2011. According to the social worker, the minor was not interested in mental health services. The minor failed to attend an appointment with the therapist at Gardner Health Center in December 2011, and it was rescheduled for January 3, 2012. The social worker spoke to the minor at 5:00 p.m. on January 3, 2012, when the minor was still in bed after sleeping the entire day. The minor did not want to speak with the therapist and wanted to continue sleeping. Neither the mother nor the social worker was able to motivate the minor to get out of bed. However, the minor eventually had an intake appointment for individual and family counseling. The minor refused to take psychotropic medication for depression because it "makes her feel bad, and that she feels happy at home."

On January 30, 2012, the report by the child advocate was filed. The child advocate and the minor continued to enjoy many activities together. It was also noted that the minor had F's in all her classes at the beginning of December 2011, and she

attended Saturday School and improved her grades in three classes. The child advocate believed that the minor was “really happy to be home.”

The juvenile court ordered that the minor be returned to her mother’s custody with family maintenance services. Wraparound services were not ordered. The juvenile court stated that the minor “doesn’t have to feel this bad. And I hope somebody can kind of break through to her and talk about the possibility of medication.”

On March 5, 2012, the minor’s counsel filed a request to change the court order. The minor’s counsel stated that the minor’s “level of depression and at-risk behaviors have increased. While she desires to remain in the home, her school attendance has become nonexistent and family relations have become strained. [The minor] sees a therapist weekly but needs intensive in-home services to ensure her emotional and physical safety.” The minor’s counsel sought an “order for intensive wraparound services to support [the minor] in the home of her mother and stepfather.” The minor’s counsel believed this change would be better for the minor because “[p]rior to [the minor’s] return home, a TDM concluded that [the minor] and her family would benefit from another wrap team. [The minor’s] therapist and CASA agree that [the minor] is severely depressed and requires intensive in-home support services to help [the minor] with daily functioning and emotional support. Wraparound services are necessary to ensure her safety and maintain placement.” The Department, however, disagreed with the request, stating that the minor “requested Systems of Care which is sufficient, and [the minor] has refused to participate in the past.”

The juvenile court denied the request without prejudice. The juvenile court found that the request did “not state new evidence or a change of circumstances,” noting that “[a]t the last hearing, [the minor] was depressed & not attending school consistently & had dropped out of CCOC.” The order also stated: “Please resubmit 388 petition with more information regarding the ‘at-risk’ behaviors that have increased and additional info regarding [the minor’s] level of depression.” The minor filed a timely appeal.



## II. Discussion

The minor contends that the juvenile court erred in denying her a hearing on her former section 388 petition.

Former section 388 authorizes a dependent child of the juvenile court to petition the court for a hearing to modify or set aside any previous court order on the grounds of change of circumstance or new evidence. The petition “shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order . . . .” (Former § 388, subd. (a).) A party “seeking modification must ‘make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]’ [Citations.] There are two parts to the prima facie showing: The [party] must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child’s best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. [Citation.]” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) This court reviews the summary denial of a section 388 petition under the abuse of discretion standard. (*Ibid.*)

Relying on *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450-1451 (*Jamika W.*), *In re Hashem H.* (1996) 45 Cal.App.4th 1791, 1799 (*Hashem H.*), and *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413-1416 (*Jeremy W.*), the minor contends that the appropriate standard of review is de novo. In *Jamika W.* and *Jeremy W.*, the reviewing courts stated that they were applying the abuse of discretion standard (*Jamika W.*, at p. 1451; *Jeremy W.*, at p. 1413), while in *Hashem H.* the reviewing court did not state what standard of review that it was applying. The minor asserts, however, that these courts used a de novo standard of review because they examined the entire record of these cases before reaching their holdings.

After carefully reviewing the factual and procedural history of this case, we conclude that the juvenile court properly denied the minor's request for a hearing under either standard of review. Here, the petition alleged that the minor's "level of depression and at-risk behaviors have increased," "her school attendance has become nonexistent and family relations have become strained." These allegations did not state a prima facie showing of changed circumstances. At the last status review hearing, which was held 35 days earlier, evidence was presented to the juvenile court that the minor was sleeping all day, refusing to get out of bed despite the efforts of the social worker and the mother, refusing to take medication, having difficulties following rules at home, failing to listen to the mother, had not passed any of her classes during the last quarter, and had dropped her occupational courses. At the conclusion of this hearing, the juvenile court stated that the minor was "still struggling to go to school," needed a medication evaluation but she was "pretty unwilling," and that "all of us can tell she's depressed." The minor's counsel agreed with the juvenile court, noting that the minor had "all the right intentions," but that "on a day-to-day basis it's hard for her to get motivated." Since the allegations in the former section 388 were consistent with the evidence before the juvenile court at the status review hearing in January, the juvenile court properly denied the petition without a hearing.

### **III. Disposition**

The order is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.